No. 5373

1540 In the 1534

United States Circuit Court of Appeals

For the Ninth Circuit

E. CLEMENS HORST COMPANY, a corporation
Plaintiff in Error

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant in Error

Transcript of Record

Upon Appeal from the United States District Court for the District of Oregon

No._____

In the

United States Circuit Court of Appeals

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E. CLEMENS HORST COMPANY, a corporation
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Upon Appeal from the United States District Court for the District of Oregon

INDEX OF THE PRINTED TRANSCRIPT OF RECORD

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD

HERMAN PHLEGER,
Crocker Building, San Francisco, California.

MAURICE E. HARRISON,
Crocker Building, San Francisco, California.

ALBERT B. RIDGWAY,
United States National Bank Building,
Portland, Oregon.

E. A. JOHNSON,
United States National Bank Building,
Portland, Oregon.

JOHN C. KENDALL,
United States National Bank Building,
Portland, Oregon.
Attorneys for Plaintiff in Error.

FRANKLIN T. GRIFFITH,
Electric Building, Portland, Oregon.

CASSIUS R. PECK,
Electric Building, Portland, Oregon.

JOHN S. COKE,
Electric Building, Portland, Oregon.
Attorneys for Defendant in Error.

In the United States Circuit Court of Appeals for the Ninth Circuit

E. Clemens Horst Company, a corporation
Plaintiff in Error
vs.
The Hartford Accident and Indemnity Company, a corporation
Defendant in Error

CITATION ON WRIT OF ERROR

United States of America, District of Oregon, ss.

To The Hartford Accident and Indemnity Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the District of Oregon, wherein E. Clemens Horst Company, a corporation, is the plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand at Portland in said District this 3rd day of January, in the year of our Lord, one thousand nine hundred and twenty-eight.

R. S. Bean, Judge.

Filed January 3, 1928.
G. H. Marsh, Clerk.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 3rd day of January, 1928.

GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant and
Defendant in Error.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

E. CLEMENS HORST COMPANY, a corporation
Plaintiff in Error

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant in Error

WRIT OF ERROR

The United States of America, ss.

The President of the United States of America. To the Judge of the District Court of the United States for the District of Oregon:

Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the District Court before the Honorable Robert S. Bean, one of you, between E. Clemens Horst Company, a corporation, plaintiff and plaintiff in error, and The Hartford Accident and Indemnity Company, a corporation, defendant and defendant in error, a manifest error hath happened to the

great damage of the said plaintiff in error, as by complaint doth appear; and we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid, and, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable William Howard Taft,
Chief Justice of the Supreme Court of the
United States this 3rd day of January, 1928.

G. H. Marsh,
Clerk of the District Court of the United
States for the District of Oregon.

By F. L. Buck,
Chief Deputy.

(Seal)

Filed January 3, 1928.

G. H. MARSH,
Clerk United States District Court,
District of Oregon.
By F. L. BUCK,
Chief Deputy Clerk.

Be It Remembered that on the 5th day of August, 1926, there was duly filed in the District Court of the United States for the District of Oregon a Bill of Complaint, as follows:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

COMPLAINT

Comes now E. Clemens Horst Company, and for cause of action against the above named defendant The Hartford Accident and Indemnity Company, complains and alleges:

I.

That at all of the dates and times in this complaint mentioned plaintiff E. Clemens Horst Company was and now is a corporation duly organized and existing under and by virtue of the laws

of the State of New Jersey, with its principal office and place of business at 235 Pine Street in the City of San Francisco, State of California, and was and is a citizen of the State of New Jersey, resident and domiciled at the San Francisco address hereinabove given, and at all of the dates and times in this complaint mentioned plaintiff was and now is duly licensed to follow and conduct its business in the State of Oregon.

II.

That at all of the dates and times in this complaint mentioned defendant The Hartford Accident and Indemnity Company, of Hartford, Connecticut, was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, with its principal office and place of business in the City of Hartford, Connecticut, and was and is a citizen of the State of Connecticut, resident and domiciled in the said City of Hartford, and at all of the dates and times in this complaint mentioned defendant was and now is duly licensed to follow and conduct its business in the State of Oregon.

III.

That during the calendar year 1925, and for some years theretofore, plaintiff was and has been and now is engaged in the business of growing, harvesting, warehousing, buying, selling, and generally dealing in hops, and in connection with and as a part of the said business of plaintiff, operated

during the 1925 calendar year large hop yards in the "Eola" district of Marion County, Oregon, the yards of plaintiff aforesaid being located in said Marion County, Oregon, about seven miles in a southwesterly direction from the City of Salem, Oregon, and in the course of and as a part of the business of plaintiff, the employment by plaintiff of large numbers of persons is annually required for the planting and cultivation of its hop crops aforesaid, and more particularly for the harvesting thereof.

IV.

That on to-wit the 5th day of August, 1925, and for the purpose of assisting plaintiff in the harvesting of its hop crops upon the yards of plaintiff in the Eola District aforesaid, plaintiff employed W. P. Rogan and wife Margaret E. Rogan in the capacity of hop pickers, and as a part of the said contract of employment of said Rogans, plaintiff agreed with said Rogans to transport them from the railroad station at Salem, Oregon, to the Eola District ranches and hop yards of plaintiff aforesaid.

V.

That for the considerations therein stated, and on to-wit the 27th day of July, 1925, plaintiff and defendant entered into a certain Employer's Liability Contract and Policy of Insurance, bearing defendant's policy number CE-10789, a copy of which policy and contract of insurance so by plaintiff and defendant entered into, together with all endorse-

ments then or thereafter made upon said contract and policy of insurance is hereto attached, marked Exhibit "A", and by reference thereto made a part hereof, and which contract of indemnity and policy of liability insurance at all times thereafter remained and was and now is in full force and effect and uncancelled and unrevoked; and that plaintiff has duly performed all of the conditions of said contract and policy of liability insurance upon its part to be performed.

VI.

That thereafter, and on to-wit the 29th day of August, 1925, the said W. P. Rogan and the said Margaret E. Rogan, pursuant to their contract of employment with plaintiff theretofore made and entered into as aforesaid, came from the City of Portland, Oregon, to the Railway Station at Salem, Oregon, for the purpose of the transportation by plaintiff of said Rogans to plaintiff's hop yards aforesaid, and said Rogans were thereupon met by agents of plaintiff at the Southern Pacific Railroad Station at Salem, Oregon, and in pursuance of the terms of their said contract of employment with plaintiff, and during the term of the employment of said Rogans by plaintiff, were by plaintiff and its said agents directed to and did board and go upon a motor truck by plaintiff owned and/or operated, for the purpose of transportation of said Rogans and their baggage and effects from the

railroad station at Salem aforesaid to the said hop yards of plaintiff.

VII.

That said motor truck was a gas-propelled vehicle, equipped with driver's seat in front, and rear flat platform or deck extending from the driver's seat to a point beyond the rear wheels of said vehicle a distance of approximately ten feet, said rear deck and platform being seven or eight feet in width, without railing or seats for passengers, it being the type of conveyance usually by plaintiff used in the transportation of hop pickers from nearby railway points to its hop yards and ranches aforesaid.

VIII.

That some fifteen persons additional to and other than said Rogans likewise at said time and place boarded the truck of plaintiff for the purposes aforesaid, with a considerable number of trunks and amount of hand baggage; and that during the term of the employment by plaintiff of said Rogans, and while said Rogans were by plaintiff employed, and in the course of the transportation by plaintiff of said Rogans from the City of Salem aforesaid to one of the hop yards of plaintiff in said Eola District, and at a point approximately six miles southwesterly from said City of Salem, the agent and employee of plaintiff driving and in charge of plaintiff's said truck and conveyance, executed a sharp turn of said conveyance while driv-

ing at high speed, thereby throwing each of the said Rogans from said motor truck and conveyance of plaintiff, and from a trunk of said Rogans placed upon said truck, and upon which they were then sitting, a distance of approximately five feet to the ground, the said trunk of said Rogans thereupon being likewise thrown from said truck and upon the said Rogans.

IX.

That by reason of the said Rogans being thrown from the truck and conveyance of plaintiff at the time and under the circumstances hereinabove set forth, the said Margaret E. Rogan was bruised and painfully injured, and suffered an intra capsular fracture of her left hip, causing a shortening of her left leg, and further suffered a compound longitudinal fracture of her right leg above the ankle, and the said W. P. Rogan was bruised and painfully injured, suffering a dislocation of his left shoulder joint, and a fracture of his left arm between the elbow and shoulder.

X.

That plaintiff believes and therefore avers that the injuries to its said employees W. P. Rogan and Margaret E. Rogan occurred through the negligence and carelessness of plaintiff's agents and employees in failing to provide the said Rogans with a vehicle equipped with fixed and stationary seats, and rails or sides or other means of the said Rogans holding to and remaining upon said truck

while in motion, and by reason of plaintiff's said employee and driver sharply and abruptly turning said vehicle, without notice or warning to the said Rogans and other persons riding thereon, and while going at a high rate of speed, and that by reason of the facts aforesaid there was imposed upon plaintiff herein by the laws of the State of Oregon a liability for the injuries so by said Rogans sustained, in the minimum amount of $4,000.00, and by said Rogans claimed to be in the amount of $25,850.00.

XI.

That thereafter, and on to-wit the 31st day of August, 1925, plaintiff gave to defendant herein immediate written notice of the occurrence of said accidents to said Rogans, with all particulars to plaintiff available, and sufficient to identify plaintiff as the assured, and from time to time thereafter has provided defendant with all other particulars and information concerning said accident and coming to plaintiff's knowledge or information, and has at all times aided to the extent of plaintiff's ability in the securing of information and evidence desired by defendant and its agents and attorneys concerning the accident aforesaid.

XII.

That thereafter, and on to-wit the 27th day of October, 1925, the said Margaret E. Rogan instituted in the Circuit Court of the State of Oregon for Multnomah County by complaint by her filed,

an action therein entitled *Margaret E. Rogan, plaintiff, vs. E. Clemens Horst Company, a corporation, defendant,* and numbered L-4417, for the purpose of securing judgment against plaintiff herein for the sum of $20,700.00, by said Margaret E. Rogan claimed from plaintiff by reason of injuries by her sustained in the course and as the result of the accident hereinabove stated, copy of which complaint in which Circuit Court action is hereto attached and marked Exhibit "B", and by reference thereto made a part hereof.

XIII.

That thereafter, and on to-wit the 27th day of October, 1925, the said W. P. Rogan instituted in the Circuit Court of the State of Oregon for Multnomah County, by complaint by him filed, an action therein entitled *W. P. Rogan, plaintiff, v. E. Clemens Horst Company, a corporation, defendant,* and numbered L-4416, for the purpose of securing judgment against plaintiff herein for the sum of $5,150.00, by said W. P. Rogan claimed from plaintiff by reason of injuries by him sustained in the course and as the result of the accident hereinabove stated, copy of which complaint in which Circuit Court action is hereto attached and marked Exhibit "C", and by reference thereto made a part hereof.

XIV.

That thereafter, and on to-wit the 30th day of October, 1925, summons issued in the Circuit Court

actions hereinabove mentioned, together with copies of complaint therein filed, were served upon plaintiff herein; whereupon plaintiff immediately forwarded to defendant herein the said summons and copies of complaints so served upon plaintiff, and demanded of defendant herein the defense by defendant on behalf of plaintiff of said Circuit Court actions so by said Rogans instituted, in conformity with the provisions of the said contract and policy of liability insurance aforesaid, but that defendant herein at all times has and now does disavow any liability under the contract and policy of insurance aforesaid to indemnify plaintiff herein against loss to plaintiff by reason of the liability of plaintiff to said Rogans imposed by law for damages by said Rogans sustained on account of bodily injuries by them suffered in the accident aforesaid, despite the fact that neither of said Rogans comes within any of the exclusions of liability in paragraphs 1-a, 1-b, 1-c, 1-d, and 1-e of the policy of insurance aforesaid, or other exclusions therein provided whatsoever.

XV.

That thereafter, and on to-wit the 30th day of November, 1925, and after negotiations between counsel for the parties hereto and counsel for said Rogans, extending over a period of several weeks, plaintiff herein settled its said and any and all liability of plaintiff and/or plaintiff's employees (including H. M. Ord and George E. Miller), to said

Rogans or either thereof, by the payment by plaintiff to said Rogans of the cash sum and amount of $4,000.00, of which payment and settlement defendant was then notified, and at all times thereafter advised; it having been theretofore and then being agreed between plaintiff and defendant (but without admission by defendant of liability upon its said policy and contract of insurance) that in the interests of all parties concerned the said settlement with said Rogans ought to and should be made; and in order to make possible the said settlement by plaintiff herein without waiver of or prejudice to any rights of plaintiff under said contract of insurance, defendant, by its writing of said date (November 30, 1925) and by its secretary and executive officer duly signed and to plaintiff delivered, expressly waived those provisions of said contract of insurance precluding said or any settlement by plaintiff with said Rogans, and particularly waived the requirements by "Condition C" and "Condition N" of said insurance policy and contract upon plaintiff imposed; defendant by its said writing agreeing that the said settlement by plaintiff made with said Rogans might and should be made without prejudice to plaintiff's right to indemnity under the contract of insurance aforesaid.

XVI.

That heretofore and on to-wit the 30th day of November, 1925, plaintiff advised defendant of plaintiff's loss of said sum of $4,000.00, so by plain-

tiff paid to said Rogans as aforesaid, and made demand upon defendant for the payment by defendant to plaintiff of said sum as in said contract and policy of insurance provided for, but that defendant refused and at all times since and now refuses to pay to plaintiff said or any sum, or to in any manner indemnify or protect plaintiff in its said loss so by plaintiff sustained as herein set forth.

XVII.

That by reason of defendant's repudiation of its obligations to plaintiff under said insurance contract, and of defendant's denial of liability thereunder, plaintiff was required to and did retain attorneys and counsel to investigate said accident and injury to said Rogans, to defend the suits so by said Rogans brought against plaintiff, and on behalf of plaintiff to negotiate settlement of and to settle said claims, which services were by plaintiff's said attorneys to plaintiff rendered, and were and are of the reasonable and agreed value of $500.00 for the payment of which plaintiff herein has become and is legally liable.

XVIII.

That for the bringing and prosecution by plaintiff of this action upon defendant's said contract and policy of insurance (more than eight months having elapsed since notice to defendant of plaintiff's claims and loss thereunder), the sum of $500.00 is a reasonable sum to be by the Court

above entitled adjudged and allowed to plaintiff as attorneys' fees.

XIX.

That there is involved in this action a sum and amount in excess of $3000.00, exclusive of interest and costs.

Wherefore, plaintiff prays judgment against defendant in the sum of $4,000.00 with interest thereon at 6 per cent per annum from November 30, 1925, until paid, and for the further sum of $500.00, and for the further sum of $500.00 as attorneys' fees for the institution and prosecution of this action, and for plaintiff's costs and disbursements herein.

BROBECK, PHLEGER & HARRISON,
RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.

State of California, City and County of San Francisco, ss.

I, E. Clemens Horst, being first duly sworn, depose and say that I am the president of plaintiff corporation in the above entitled action, and that the foregoing complaint is true, as I verily believe.

(Signed) E. CLEMENS HORST,

Subscribed and sworn to before me this 30th day of July, 1926.

(Signed) EUGENE P. JONES,
Notary Public for the State of California.
My commission expires October 18, 1927.

EXHIBIT "A"

EMPLOYERS' LIABILITY POLICY

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, HARTFORD, CONNECTICUT

(Seal)

In consideration of the premium hereinafter named and of the warranties of the assured hereinafter set forth which are made a part of this policy by the acceptance thereof, hereby agrees:

Liability for Bodily Injuries or Death

(1) To indemnify the assured named in the warranties hereof against loss by reason of the liability imposed by law upon the assured for damages on account of bodily injuries, including death at any time resulting therefrom, whether instantaneous or not, suffered or alleged to have been suffered as the result of an accident occurring while this policy is in force, by any employee or employees of the assured while at or about the work of the assured described in Warranty 4, which for the purpose of this insurance shall include all operations necessary, incident or appurtenant thereto, or connected therewith, whether such operations are conducted at the work places defined and described in the warranties, or elsewhere in connection with or in relation to such work places, except such loss from claims arising from bodily injuries or death:

Exclusions

(a) Caused or suffered by any person employed by the assured under the age fixed by

law, or under the age of fourteen (14) years where no age is so fixed.

(b) Caused or suffered by any contract convict laborer.

(c) Suffered by any employee whose remuneration is specifically excluded in Warranty 5.

(d) Suffered by any employee to whom the assured may be liable under any Workmen's Compensation plan or law.

(e) Liability of others assumed by the assured under any contract or agreement, oral or written.

Defense of Claims and Suits

(2) To investigate cases of bodily injuries or death covered by this policy, to negotiate for the settlement of claims made on account of such cases of bodily injuries or death, and to defend suits, even if groundless, brought on account of such cases of bodily injuries or death, unless or until the company shall elect to effect settlement thereof.

Expenses

(3) To pay, in addition to damages, all expenses incurred by the company for investigation, negotiation, or defense; all costs taxed against the assured in any legal proceeding defended by the company; and interest accruing after entry of judgment upon such part thereof as shall not be in excess of the company's limit of indemnity as hereinafter expressed; and

Surgical Relief

(4) To pay for such immediate surgical relief as is imperative at the time of an accident.

SUBJECT TO THE FOLLOWING CONDITIONS AND WARRANTIES

Limits of Indemnity

A. The company's liability under this policy, whether it be issued in the name of one assured or of more than one assured, for loss from an accident resulting in bodily injuries to or in the death of one person, is limited to the sum of Five Thousand Dollars ($5,000); and subject to the same limit for each person, the company's liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person, is limited to the sum of Ten Thousand Dollars ($10,000), but in addition the company will pay all expenses for which the company may be liable under Agreements 3 and 4.

Notices

B. Upon the occurrence of an accident covered by this policy an immediate written notice thereof with particulars sufficient to identify the assured shall be given by or in behalf of the assured to the company at its home office at Hartford, Connecticut, or to one of its authorized agents. Failure to give immediate notice as herein provided within the time specified shall not invalidate any claim made by the assured if it shall be shown not to have been reasonably possible to give such notice within the prescribed time and that notice was given as soon as was reasonably possible. If any claim is made on account of such accident, the assured shall give like notice thereof to the company with full particulars. If thereafter suit is brought against the assured to enforce

such claim, the assured shall immediately forward to the company every summons or other process served upon the assured.

Cooperation of Assured

C. The assured shall not voluntarily assume any liability, nor incur any expense, other than for such immediate surgical relief as is imperative at the time of an accident, nor settle any claim except at the assured's own cost. The assured shall not interfere in any negotiation for settlement, nor in any legal proceeding, but whenever requested by the company, and at the company's expense, the assured shall aid in securing information and evidence, and the attendance of witnesses, and shall cooperate with the company (except in a pecuniary way) in all matters which the company deems necessary in the defense of any suit or in the prosecution of any appeal.

Action Against Company

D. No action shall lie against the company to recover for any loss under this policy unless brought within two years after the amount of such loss is made certain either by judgment against the assured after final determination of the litigation or by agreement between the parties with the written consent of the company; but this limitation shall not be deemed to extend a shorter, applicable statutory limitation, if any.

Bankruptcy or Insolvency

E. The bankruptcy or insolvency of the named assured shall not relieve the company from the payment of such indemnity hereunder

as would have been payable but for such bankruptcy or insolvency. If because of such bankruptcy or insolvency an execution on a judgment for damages against the named assured is returned unsatisfied in an action brought by the injured, or his or her personal representative where death results from the accident, an action may be maintained by the injured person or his or her personal representative, against the company, subject to the terms of this policy, for the amount of such judgment not exceeding the amount of this policy.

Subrogation

F. In case of payment of loss under this policy, the company shall be subrogated to all rights of the assured against any person, partnership, corporation, or estate, as respects such loss, to the extent of such payment, and the assured shall execute all papers required and shall cooperate with the company to secure to it such rights.

Other Insurance

G. If the assured has other insurance not issued by this company, against a loss covered by this policy, the assured shall not be entitled to recover hereunder a larger proportion of the entire loss than the sum hereby insured bears to the total amount of valid and collectible insurance.

Assignment

H. No assignment of interest under this policy shall bind the company, unless such assignment is consented to by endorsement signed by an executive officer of the company

or the superintendent of its liability department and countersigned by a duly authorized agent of the company.

Premium Computation

I. The premium is based upon the entire remuneration earned during the policy period by all employees of the assured (except those specifically excluded in Warranty 5) engaged in the work described in and covered by this policy. The premium is subject to adjustment at the termination of the policy, when the assured shall furnish to the company, for the purpose of said adjustment, a written declaration of the amount of remuneration earned by the said employees during the period for which the adjustment is made. If the earned premium computed thereon at the rate or rates specified in Warranty 4 exceeds the estimated premium paid, the assured shall pay the additional amount to the company; if less, the company shall return to the assured the unearned premium. Except in the event of cancellation by the company or by the assured when the assured is retiring from business, the company shall receive or retain the minimum premium named in the warranties. If the assured does not keep complete and accurate pay-roll records corresponding to the classifications covered by this policy, the premium due the company shall be computed and paid on the entire remuneration at the highest premium rate provided by the policy.

Cancellation

J. This policy may be cancelled at any time at the request of the assured, or by the company by giving ten (10) days' notice in writing of such cancellation, and the date of cancellation shall then be the end of the policy period. If canceled by the assured at any time other than when retiring from business, the company shall receive or retain the short rate premium, in accordance with the short rate table printed hereon, which shall not be less than the minimum premium named in the warranties. If canceled by the company or by the assured on retiring from business, the company shall be entitled to the earned premium on a pro rata basis regardless of the minimum premium. To determine the amount of premium due the company when calculated according to the short rate table printed hereon, the premium shall be computed for the period for which the policy is written, on the basis of remuneration earned by employees during the time the policy has been in force. Notice of cancellation mailed to or delivered at the address of the assured as given herein, shall be a sufficient notice, and the check of the company or of its authorized agent, similarly mailed or delivered, shall be a sufficient tender of any unearned premium.

Inspection

K. The company shall be permitted at all reasonable times during the policy period to inspect the premises, plants, works, machinery, and appliances used in connection with the

work covered by this policy, but the company waives no right and assumes no responsibility by reason of such inspection or the omission thereof.

Audit

L. The company shall be permitted at all reasonable times during the policy period, or within one year after its expiration, to examine the assured's books or any other records so far as they relate to the remuneration earned by employees during the time the policy shall have been in force, but the company waives no right and assumes no responsibility by reason of such examination or the omission thereof.

Definitions

M. The term "remuneration", used in this policy, shall be construed to mean all salaries, wages, earnings for regular time, overtime, piece-work, bonuses or allowances, and the cash equivalent of all board, merchandise, store certificates, credits, or other substitute for cash.

Changes

N. No agreement, condition, or warranty of this policy shall be waived or changed, except by endorsement attached hereto, signed by an executive officer of the company or the superintendent of its liability department; nor shall notice to or knowledge possessed by any agent or any other person be held to effect a waiver or change in any part of this policy unless endorsed hereon and signed as above provided.

Specific Statutory Provisions

P. If any condition in this policy contained relating to limitation of time for notice of accident or for any legal proceeding is at variance with any specific statutory provision in the state in which the accident occurs, such specific statutory provision shall be substituted for such condition.

This space is intended for the attachment of such endorsements as may be executed as in the policy provided, and, when so executed and attached, they shall be construed as a part of the policy.

(Following are the endorsements attached.)

In consideration of the premium at which this policy is written, it is hereby understood and agreed that it is the intent of this policy to cover all the operations of the assured in Oregon, whether or not such operations are declared under Warranty 4; and the premium charge on such operations as are not declared, will be adjusted at the end of the policy year in accordance with the manual of rules and rates as filed by the Company with the State of Oregon.

It is further understood and agreed that this policy covers employees of the assured who are hired and employed in Oregon wherever such employees may be temporarily sent in the United States of America or Canada in the performance of their duties.

This endorsement to take effect on the 13th day of August, 1925, at Noon.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements, or warranties of the undermentioned policy, other than as above stated.

Attached to and forming part of Policy No. CE-10789 issued by the Hartford Accident and Indemnity Company, of Hartford, Conn., in favor of E. Clemens Horst, et al., of San Francisco, California, but the same shall not be binding until countersigned by the duly authorized agent of the company.

J. Collins Lee, Secretary. R. M. Bissell, President.

Countersigned at Portland, Oregon, the 20th day of August, 1925.

Jewett & Barton,
By J. Stuart Leavy,
Authorized Agent.

5M-8-24

Condition A of the policy to which this endorsement is attached is hereby eliminated and the following Condition A is substituted therefor:

A. The company's liability under this policy, whether it be issued in the name of one assured or of more than one assured, for loss from an accident resulting in bodily injuries to or in the death of one person is limited to the sum of Thirty Thousand . . . Dollars ($30,000.00); and subject to the same limit for each person, the company's liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to the sum of . . . One Hundred Forty

Thousand Dollars ($140,000.00), but in addition the company will pay all expenses for which the company may be liable under agreements 3 and 4.

This endorsement shall apply to accidents occurring on and after the 13th day of August, 1925, at Noon, standard time at the place where the policy to which it is attached was countersigned, and shall terminate at the end of the policy period, but shall not be binding until countersigned by the duly authorized agent of the company.

Nothing herein contained shall be held to vary, waive, alter, or extend any agreement, condition or warranty of the policy other than as above stated.

Attached to and forming part of Policy No. CE-10789 of the Hartford Accident and Indemnity Co., Hartford, Conn., issued in favor of E. Clemens Horst Company and/or H. M. Ord and/or George E. Miller of San Francisco, California.

J. Collins Lee, Secretary. R. M. Bissell, President.

Countersigned at Portland, Oregon, this 27th day of July, 1925.

Jewett & Barton,
J. Stuart Leavy,
Authorized Agent.

20mm 6-21-'23

Oregon Voluntary Compensation

It is hereby understood and agreed, that, effective as of even date with the policy, the company will pay to injured employee the Workmen's Compensation benefits provided in

the Oregon Workmen's Compensation Law which took effect June 30th, 1914, and acts amendatory thereof, in exchange for a general release to be executed by the injured employee or his legal representatives releasing the employer (the assured named in the under-mentioned policy) from all liability in connection with the accident.

This endorsement to take effect on the 13th day of August, 1925, at Noon.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements, or warranties of the undermentioned policy, other than as above stated.

Attached to and forming part of Policy No. CE-10789 issued by the Hartford Accident and Indemnity Company, of Hartford, Conn., in favor of E. Clemens Horst Company and/or H. N. Ord and/or George E. Miller of San Francisco, California, but the same shall not be binding until countersigned by the duly authorized agent of the company.

J. Collins Lee, Secretary. R. M. Bissell, President.

Countersigned at Portland, Oregon, the 27th day of July, 1925.

Jewett & Barton,
J. Stuart Leavy,
Authorized Agent.

Comp. 2 IM-4-24

Endorsement Covering Piece Workers

It is hereby understood and agreed that the word "Employees" wherever used in the under-

mentioned policy shall include all piece workers and tenants under contract or sub-contract; and that the contract price per acre for land cultivation and per ton for hop picking shall be used as the basis for the computation of premium under the below mentioned policy.

This endorsement effective with even date of policy.

This endorsement to take effect on the 13th day of August, 1925, at Noon.

Nothing herein contained shall be held to vary, waive, alter, or extend any of the terms, conditions, agreements, or warranties of the undermentioned policy, other than as above stated.

Attached to and forming part of Policy No. CE-10789 issued by the Hartford Accident and Indemnity Company, of Hartford, Conn., in favor of E. Clemens Horst Company and/or H. N. Ord and/or George E. Miller of San Francisco, California, but the same shall not be binding until countersigned by the duly authorized agent of the company.

J. Collins Lee, Secretary. R. M. Bissell, President.

Countersigned at Portland, Oregon, the 27th day of July, 1925.

Jewett & Barton,
J. Stuart Leavy,
Authorized Agent.

2 2) M-8-24-47973

Warranties

Item 1. Name of assured: E. Clemens Horst Company and/or H. N. Ord and/or George E.

Miller; P. O. address: 233 Pine Street, San Francisco, California.

For the purpose of serving notice, as in the policy provided, this assured agrees that this address may be considered as both the residence and business address of this employer or any representative upon whom notice may be served.

Individual, copartnership, corporation, or estate? Corporation.

Item 2. Locations of all shops, yards, buildings, premises or other work places of this assured, by Town or City, with Street and Number. Anywhere in Marion and Polk Counties, Oregon.

Item 3. The policy period shall be from August 13th, 1925, to August 13th, 1926, at twelve and one minute o'clock A. M., standard time at the named assured's address, as to each of said dates.

As respects any claim hereunder standard time at place where injury is sustained shall apply.

Item 4. A complete description of the work covered by this policy, the estimated remuneration of assured's employees engaged in such work, the premium rate or rates, and the deposit premium are as follows:

Description of Work Covered By This Policy	Estimated Remuneration for Policy Period	Premium Rate Per $100 of Remuneration	Estimated Premium
HOP PICKING — Including all work incidental thereto — including drivers, chauffeurs (not private) and their helpers, out-servants, occasional out-servants, also managers, superintendents and foremen engaged wholly or partly in field work (0152)	$34,500.00	1.17	$403.65
CARPENTRY—(N. O. C.) (5401)	1,000.00	6.50	55.00
GRADING LAND — Not canal or cellar excavation, quarrying railroad or street or road construction—including drivers, chauffeurs and their helpers (6041)	500.00	2.00	10.00
VEGETABLES — Drying and evaporating — rate as fruit evaporating — excluding box manufacturing (2102)	If Any	1.06	
OFFICE EMPLOYEES (8810)	100.00	.09	.09

Total estimated premium * * * FOUR HUNDRED SIXTY-EIGHT AND 74/100 Dollars ($468.74).

Item 5. The employees of the assured whose remuneration is excluded from the premium computation are as follows: Executive employes.

(Although drivers may be shown to be excluded, this policy shall apply to drivers of assured while engaged in work not connected with the maintenance and use of teams or automobiles, provided such drivers are covered under a teams or automobile policy issued by this company.)

Item 6. No work done for the assured by independent contractors or subcontractors is to be covered by this policy.

Item 7. No wrecking or demolition work, or operation of locomotives, cars, trains, or other self-propelled vehicles over tracks is to be covered by this policy unless such work is specifically described in Warranty 4, and a premium rate and deposit premium are provided therefor.

Item 8. No work of any nature not herein disclosed is done by the assured at the locations described in Warranty 4, except as follows: There may be.

Item 9. No explosives are used in connection with the work covered by this policy, except as follows: No exceptions.

Item 10. No company during the past three years has, to the knowledge of the assured, refused to grant similar insurance to the assured, or canceled any similar insurance issued to the assured, except as follows: No exceptions.

Item 11. The minimum premium for this policy is $63.00.

J. Collins Lee, Secretary. R. M. Bissell, President.

Countersigned at Portland, Oregon, this 27th day of July, 1925.

Jewett & Barton,
J. Stuart Leavy,
Authorized Agent.

EXHIBIT "B"

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MARGARET E. ROGAN
Plaintiff
vs.
E. CLEMENS HORST COMPANY, a corporation
Defendant
L-4417

COMPLAINT

Plaintiff complains of defendant and for cause of action alleges:

I.

That the defendant E. Clemens Horst Company at all times hereinafter mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and said corporation at all times hereinafter mentioned was and now is licensed to transact and transacting the business of growing and harvesting hops in the State of Oregon.

II.

That on or about the 5th day of August, 1925, plaintiff above named was employed by the defendant as a hop picker to pick hops at the defendant's hop yards located in the State of Oregon about seven (7) miles, Southwest, of the City of Salem, Oregon, and in the general direction of the City of Independence, Oregon, and by the terms of said employment it was understood and agreed that the defendant should transport plaintiff from the Southern

Pacific Railroad Station in the City of Salem, Oregon, to said hop yard.

III.

That on or about the 29th day of August, 1925, in pursuance of said agreement and under instructions of the defendant, the plaintiff met defendant at the Southern Pacific Railroad Station at Salem, Oregon, for the purpose of being transported from the said railroad station to the said hop yards of the defendant.

IV.

That in pursuance of said agreement and under the direction of the defendant the plaintiff on said day and at said railroad station boarded and got upon a certain motor truck then and there operated by and belonging to said defendant for the purpose of being transported from said railroad station to the said hop yards of the defendant; that said truck was a heavy gas-propelled motor vehicle and the only place for passengers and baggage provided thereon was a flat platform about eight feet wide by ten feet long and elevated above the surface of the roadway a distance of about five feet; that at the same time and under instruction from the defendant about fifteen other persons were placed aboard the said platform of said truck for the purpose of being transported to the defendant's said hop yards and with a large amount of trunks and other baggage, and no seats were provided for plaintiff or any of said passengers and plaintiff was compelled to sit upon a trunk, the same

being a part of the baggage placed on said platform of said truck by defendant; that said platform of said truck provided by defendant had no railing or banister nor was any other device placed upon or around the platform of said truck to prevent plaintiff or said trunk from being thrown from said motor vehicle while the same was in motion, nor was any place provided upon which the plaintiff might hold on and balance herself while said truck was in motion.

V.

That thereupon defendant undertook to carry and transport plaintiff and did carry and transport plaintiff from said railroad station at Salem, Oregon, to a point on the Pacific Highway approximately 5.6 miles from the court house at Salem, Oregon, south, in the direction of Independence, Oregon, and at that point defendant turned to the left and travelled a distance of about .4 of a mile from the said Pacific Highway in the direction of defendant's hop yards, at which point the defendant, while going, executed a sharp turn to the left, thereby forcibly throwing and hurling plaintiff from said motor truck and the said trunk upon which she was sitting a distance of approximately five feet onto the ground and thereby at the same time throwing and hurling said trunk from said truck a distance of approximately five feet down onto and on top of the plaintiff, all of which occurred by the negligence and carelessness of the defendant under the facts and circumstances hereinbefore

set forth, as follows: In turning sharply and abruptly to the left without notice or warning to plaintiff; in turning sharply and abruptly to the left while going at a dangerous and excessive rate of speed; in turning sharply and abruptly to the left without keeping said truck under proper control.

VI.

That because of the negligence and carelessness of the defendant as above set forth the plaintiff has been seriously, painfully and permanently maimed, bruised, battered and injured and plaintiff suffered an intracapsular fracture of the left hip, thereby causing a shortening of her left leg and plaintiff has further suffered a compound longitudinal fracture of the right leg above the ankle and because of which plaintiff contracted gangrene in her right leg and plaintiff has been otherwise painfully maimed, battered and bruised, all to the plaintiff's damage in the sum of $20,000.00.

VII.

That because of the negligent injury of the plaintiff by the defendant as hereinbefore set forth the plaintiff has been further damaged in that she has been compelled to incur liabilities for medical and hospital expenses, X-ray pictures and plaster casts in a sum in excess of $700.00.

Wherefore, plaintiff prays judgment against the defendant for the sum of $20,700.00 and for her costs and disbursements herein incurred.

JOHN F. LOGAN & STEPHEN W. MATTHIEU,
Attorneys for Plaintiff.

State of Oregon, County of Multnomah, ss.

I, Margaret E. Rogan, being first duly sworn, say that I am the plaintiff in the within entitled cause, and that the foregoing complaint is true as I verily believe.

(Signed) MARGARET E. ROGAN.

Subscribed and sworn to before me this 23rd day of October, 1925.

(Signed) STEPHEN W. MATTHIEU,
Notary Public for Oregon.

My commission expires 23 November, 1926.

EXHIBIT "C"

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

W. P. ROGAN
Plaintiff

vs.

E. CLEMENS HORST COMPANY, a corporation
Defendant

L-4416

COMPLAINT

Plaintiff complains of defendant and for cause of action alleges:

I.

That the defendant E. Clemens Horst Company at all times hereinafter mentioned was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and said corporation at all times hereinafter mentioned was and now is licensed to transact and transacting the

business of growing and harvesting hops in the State of Oregon.

II.

That on or about the 5th day of August, 1925, plaintiff above named was employed by the defendant as a hop picker to pick hops at the defendant's hop yards, located in the State of Oregon about seven (7) miles southwest of the City of Salem, Oregon, and in the general direction of the City of Independence, Oregon, and by the terms of said employment it was understood and agreed that the defendant should transport plaintiff from the Southern Pacific Railroad Station in the City of Salem, Oregon, to said hop yards.

III.

That on or about the 29th day of August, 1925, in pursuance of said agreement and under instructions of the defendant, the plaintiff met defendant at the Southern Pacific Railroad Station at Salem, Oregon, for the purpose of being transported from the said railroad station to the said hop yards of the defendant.

IV.

That in pursuance of said agreement and under the direction of the defendant the plaintiff on said day and at said railroad station boarded and got upon a certain motor truck then and there operated by and belonging to said defendant for the purpose of being transported from said railroad station to the said hop yards of the defendant; that said truck was a heavy gas-propelled motor vehicle and the only place for passengers and baggage pro-

vided thereon was a flat platform about eight feet wide by ten feet long and elevated above the surface of the roadway a distance of about five feet; that at the same time and under instruction from the defendant about fifteen other persons were placed aboard the said platform of said truck for the purpose of being transported to the defendant's said hop yards and with a large amount of trunks and other baggage, and no seats were provided for plaintiff or any of said passengers and plaintiff was compelled to sit upon a trunk, the same being a part of the baggage placed on said platform of said truck by defendant; that said platform of said truck provided by defendant had no railing or banister nor was any other device placed upon or around the platform of said truck to prevent plaintiff or said trunk from being thrown from said motor vehicle while the same was in motion, nor was any place provided upon which the plaintiff might hold on and balance himself while said truck was in motion.

V.

That thereupon defendant undertook to carry and transport plaintiff and did carry and transport plaintiff from said railroad station at Salem, Oregon, to a point on the Pacific Highway approximately 5.6 miles from the court house at Salem, Oregon, south in the direction of Independence, Oregon, and at that point defendant turned to the left and travelled a distance of about .4 of a mile from the said Pacific Highway in the direction of de-

fendant's hop yards, at which point the defendant, while going, executed a sharp turn to the left, thereby forcibly throwing and hurling plaintiff from said motor truck and the said trunk upon which he was sitting a distance of approximately five feet onto the ground, all of which occurred by the negligence and carelessness of the defendant under the facts and circumstances hereinbefore set forth, as follows: In turning sharply and abruptly to the left without notice or warning to plaintiff; in turning sharply and abruptly to the left while going at a dangerous and excessive rate of speed; in turning sharply and abruptly to the left without keeping said truck under proper control.

VI.

That because of the negligence and carelessness of the defendant as above set forth the plaintiff has been seriously, painfully and permanently maimed, bruised, battered and injured in that plaintiff suffered a dislocation of the left shoulder joint and also a fracture of the left arm between the elbow and the shoulder and furthermore plaintiff was thereby otherwise painfully maimed, battered and bruised to his damage in the sum of $5,000.00.

VII.

That because of the negligent injury of the plaintiff by the defendant hereinbefore set forth the plaintiff has been further damaged in that he has been compelled to incur liabilities for medical and hospital expenses in a sum in excess of $150.00.

Wherefore, plaintiff prays judgment against

the defendant for the sum of $5,150.00, and for his costs and disbursements herein incurred.

JOHN F. LOGAN & STEPHEN W. MATTHIEU,
Attorneys for Plaintiff.

State of Oregon, County of Multnomah, ss.

I, W. P. Rogan, being first duly sworn, say that I am the plaintiff in the within entitled cause, and that the foregoing complaint is true as I verily believe.

(Signed) W. P. ROGAN.

Subscribed and sworn to before me this 27th day of October, 1925.

(Signed) STEPHEN W. MATTHIEU,
Notary Public for Oregon.

My commission expires 23 November, 1926.

And afterwards, to-wit, on the 4th day of September, 1926, there was duly filed in said court and cause a motion to strike, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

MOTION TO STRIKE

Comes now the defendant above named, and moves the Court for an order striking from the

complaint all of paragraph numbered XVII, being set forth on page 8 between lines 22 and 32, inclusive, thereof, for the reason that the matters set forth in said portions of said complaint are sham, frivolous, irrelevant and redundant.

And defendant, for the reason above stated, moves the Court for an order striking from the prayer of the complaint the following portion thereof:

Commencing with the words "and for", in line 14 of page 9, down to and including that portion ending with the word "actions", in line 16 of said page.

GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant.

In presenting the foregoing motion, defendant will rely upon Section 86, Oregon Laws, and the Annotations thereunder.

JOHN S. COKE,
Of Attorneys for Defendant.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 4th day of Sept., 1926.

ALBERT B. RIDGWAY,
Of Attorneys for Defendant.

And afterwards, on Monday, the 13th day of September, 1926, the same being the 48th judicial day of the regular July term, the following proceedings were had in said cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

Now at this day comes the plaintiff by Albert B. Ridgway, of counsel, and defendant, by Mr. John S. Coke, of counsel, whereupon this cause comes on to be heard by the Court on the motion of the defendant to strike out parts of the complaint herein, and the Court having heard the arguments of counsel, will advise thereof.

And afterwards, on to-wit the 15th day of September, 1926, a waiver of motion to strike was duly filed in said court and cause in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff
vs.
THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant
No. L-9929

WAIVER OF MOTION TO STRIKE

Since filing the motion in behalf of defendant, to strike that portion of the complaint relating to attorney fees claimed in effecting the adjustment between the plaintiff and the injured persons, we have investigated the authorities and are satisfied that our position is untenable, and therefore respectfully waive the motion.

Defendant moves the Court for fifteen days within which to file a demurrer, or otherwise further plead or appear herein, and in this connection defendant represents to the Court that counsel for the plaintiff have orally agreed with defendant's attorneys to the making of such order.

Dated at Portland, Oregon, this 15th day of September, 1926.

GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant.

Plaintiff consents to an order extending time as above requested, until October 1, 1926.

E. A. JOHNSON,
Plaintiff
Of Attorneys for Defendant.

And afterwards, to-wit, on Thursday, the 16th day of September, 1926, the same being the 51st judicial day of the regular July term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

September 16, 1926.

Now at this day comes the defendant by Mr. John S. Coke, of counsel, and files its consent that the motion to strike be denied. Whereupon

It is ordered that said motion be, and the same is hereby denied; and thereupon, on motion of said defendant

It is further ordered that said defendant be and is hereby allowed fifteen days from this date to further plead herein.

And afterwards, to-wit, on the 1st day of October, 1926, there was duly filed in said court and cause a demurrer in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

DEMURRER

Comes now the defendant above named and demurs to plaintiff's complaint herein, for the reason that said complaint does not state facts sufficient to constitute a cause of action.

GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant.

In support of the foregoing demurrer, defendant will rely on the proposition that it appears from the face of plaintiff's complaint that W. P. Rogan and/or Margaret Rogan, at the time of the accident described in the complaint, were not employees of and were not in the employ of the plaintiff,

within the terms of said policy of insurance attached to plaintiff's complaint as an exhibit.

JOHN S. COKE,
Of Attorneys for Defendant.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 1st day of October, 1926.

RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.

And afterwards, to-wit, on Monday, the 20th day of December, 1926, the same being the 42nd judicial day of the regular November term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

December 20, 1926.

Now at this day this cause comes on to be heard by the Court upon the demurrer to the complaint herein, plaintiff appearing by Mr. Albert B. Ridgway, of counsel, and defendant by Mr. John S.

Coke, of counsel. And the court, having heard the arguments of counsel will advise thereof. And whereupon, on motion of counsel,

It is ordered that the defendant be and is hereby allowed twenty days from this date in which to file a brief herein, and that plaintiff be and is hereby allowed ten days thereafter to file its brief therein, and that defendant be and is hereby allowed ten days after that in which to file its reply brief.

And afterwards, on to-wit the 24th day of January, 1927, there was filed in said court and cause a stipulation in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

STIPULATION

It is hereby stipulated by and between E. Clemens Horst Company, a corporation, plaintiff herein, hereinafter referred to as "the Horst Company", by Albert B. Ridgway, one of its attorneys of record, and The Hartford Accident and Indemnity Company, a corporation, defendant herein, herein-

after referred to as "the Hartford Company", by John S. Coke, one of its attorneys of record:

I.

That E. Clemens Horst Company and The Hartford Accident and Indemnity Company at all the dates and times herein mentioned were and now are corporations, duly organized and existing, the former by virtue of the laws of the State of New Jersey, with its principal office at 235 Pine Street, San Francisco, California, and the latter by virtue of the laws of the State of Connecticut, with its principal office in the City of Hartford, Connecticut.

II.

That the Horst Company has been and is engaged in the business of growing, harvesting, buying, selling and generally dealing in hops, and in connection therewith operates large hop yards in the Eola District, Marion County, Oregon, and annually employs at said yards large numbers of persons in the harvesting of its crops.

III.

That on July 27, 1925, the Horst Company and the Hartford Company entered into a certain employer's liability contract and policy of insurance, bearing defendant's policy number CE-10789, a true copy of which policy, together with all endorsements then or thereafter made upon same, is attached to the complaint of the Horst Company filed

herein, marked Exhibit "A", which policy was in full force and effect at all times herein mentioned.

IV.

That in accordance with its usual custom, the Horst Company upon the approach of the harvest season in the year 1925, printed and extensively distributed a circular, advertising for two thousand hop pickers, it being stated in said circular among other things, that the Portland office of the Horst Company would be located at the Coffey & Sheehy Hardware and Sporting Goods Store, 223 Morrison Street, and that as a part of its agreement with those who were to become its hop pickers, it would haul them, free of charge, from Salem or Independence to its ranch, provided they arrived at either of said stations on or between dates of August 29th and August 31st inclusive; it being further stated in said circular that picking was to start September 1, 1925, and that pickers would be required to deposit $1.00 for each room or tent for two or more pickers, and that said deposit would be refunded after the arrival of hop pickers at plaintiff's hop yards;

That on August 5, 1925, and pursuant to the terms of said circular, plaintiff, through its agent, Helen B. Henderson, at its said Portland office, entered into a contract with W. P. Rogan and Margaret E. Rogan, his wife, under the terms of which contract the said Rogans were to pick hops, commencing September 1, 1925, at plaintiff's hop yards

in the Eola District of Marion County, Oregon, for the sum of — cents per pound picked, plaintiff by said contract agreeing with the said Rogans to transport them without charge from the railroad station at Salem, Oregon, to the Eola Ranch and hop yards of plaintiff, and plaintiff accepted from the said Rogans the sum of $1.00 as a deposit for the use of Cabin No. 47 in Camp 1, at plaintiff's said hop yards, and the said Henderson thereupon entered the names of the said Rogans in her registry book, with the number of the above named cabin and camp assigned to the said Rogans, and reported same to the manager of the Horst Company at said Eola Ranch. The only work to be performed by said Rogans under said contract was to pick hops for plaintiff at — cents per pound, and no such work was actually performed by either of said Rogans for plaintiff.

V.

That on August 29, 1925, the said Rogans came from the City of Portland, Oregon, to the Southern Pacific Railway Station at Salem, Oregon, where they were met by agents of the Horst Company with a motor truck for the purpose of being transported from Salem to said Eola Ranch as aforesaid, said truck being equipped with a driver's seat in front, and a rear platform extending from the driver's seat to a point beyond the rear wheels of said truck a distance of approximately ten feet, and seven or eight feet in width, and without rail-

ing or seats for passengers; that said Rogans and some fifteen other persons in addition at that time and place boarded the said truck with their luggage, and while being by said truck of plaintiff transported to the Eola hop yards of the Horst Company, and when about six miles from Salem, the said Rogans were thrown or fell from said motor truck and from a trunk of the said Rogans placed upon said truck and upon which the Rogans were theretofore sitting, to the ground, the trunk of the said Rogans being likewise thrown or falling from said truck and upon said Rogans; that in and by reason of said fall the said Margaret E. Rogan was injured, suffering an intracapsular fracture of her left hip and a compound longitudinal fracture of her right leg above the ankle, and said W. P. Rogan was injured, suffering a dislocation of his left shoulder joint and a fracture of his left arm between the elbow and the shoulder; that the circumstances under which the said Rogans were so injured, other than such facts as are herein agreed upon, are left to proof by the parties hereto.

VI.

That thereafter, on August 31, 1925, the Horst Company gave written notice to the Hartford Company of the occurrence of said accidents, with all particulars to it then available, and from time to time thereafter provided the Hartford Company with all other particulars and information concerning said accident and coming to the notice of

the Horst Company, and at all times has aided the Hartford Company to the extent of its ability in the securing of information and evidence concerning said accidents.

VII.

That on October 27, 1925, the said Rogans instituted in the Circuit Court of the State of Oregon for Multnomah County their separate actions against the Horst Company, Mrs. Rogan praying for judgment in the sum of $20,700.00, and Mr. Rogan praying for judgment in the sum of $5,150.00, true copies of which complaints are attached to and made a part of the complaint filed by the Horst Company herein, marked Exhibits "B" and "C" respectively.

VIII.

That thereafter, on October 30, 1925, summons issued in said actions, and with copy of the complaints were served upon the Horst Company, and said Horst Company immediately forwarded same to the Hartford Company, demanding that said Hartford Company defend said actions on behalf of the Horst Company, in conformity with the provisions of the policy of liability insurance hereinbefore referred to, which demand was by said Hartford Company refused, said Hartford Company disavowing any liability under its said policy of insurance.

IX.

That on November 30, 1925, and after negotia-

tions between counsel for the plaintiff hereto and counsel for said Rogans, extending over a period of several weeks, the said Horst Company, through its attorneys, Ridgway, Johnson & Montgomery, settled any and all liability of the Horst Company and/or any of the Horst Company's employes, including H. M. Ord and George E. Miller, to the said Rogans, or either thereof, by the payment by the Horst Company to the said Rogans of the sum of $4,000.00, of which payment the Hartford Company was then notified and at all times thereafter advised, a written stipulation concerning said settlement having been theretofore entered into between the parties hereto, copy of which is hereto attached, marked "Exhibit 1", which stipulation "Exhibit 1" it is agreed may be received and considered in evidence of said Rogan settlement.

X.

That heretofore, and on to-wit the 30th day of November, 1925, the Horst Company through its attorneys advised the Hartford Company of the Horst Company's loss of $4,000.00 paid by it to the said Rogans, and made demand upon the Hartford Company for the payment to it of said sum; but that the Hartford Company refused and at all times since and now refuses to pay to the Horst Company said sum of $4,000.00, or any portion thereof, or to in any manner indemnify or protect the Horst Company in its said loss thus sustained.

XI.

That in event liability against the said Hartford Company is found by the above entitled Court herein, on its contract of insurance with the said Horst Company, the Court shall award a reasonable sum for services rendered by the said attorneys of said Horst Company in investigating the said accident and injury to the said Rogans, defending the suits instituted by the said Rogans against the Horst Company, and in the negotiation of a settlement with the said Rogans of their said claims, the amount thereof to be determined by the Court upon such showing as the Court may request.

XII.

That in event liability against the said Hartford Company is found by the above entitled Court herein, on its contract of insurance with the said Horst Company, the Court shall award a reasonable sum for services rendered by the attorneys for the said Horst Company for the bringing and prosecution of the within action, the amount thereof to be determined by the Court upon such showing as the Court may request.

XIII.

That neither of the said Rogans come within the terms of any of the exclusions of liability in paragraphs 1-a, 1-b, 1-c, 1-d, and 1-e of the said policy of insurance.

XIV.

That for the purpose of considering and determining the demurrer filed herein by the defendant, all facts agreed and stipulated to herein shall be taken and considered by the Court as admitted.

XV.

That either party to this stipulation may upon the hearing and trial of the cause above entitled, offer any evidence which such party or its counsel may deem proper as bearing upon any issue in this action not in this stipulation fully covered.

XVI.

Wherever there is a difference in the facts as alleged or stated in the complaint and the facts covered by this stipulation, the facts as stated herein shall govern.

BROBECK, PHLEGER & HARRISON,
RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.
GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant.

"EXHIBIT 1"

This Memorandum of Agreement, made in duplicate, and entered into this 30th day of November, 1925, by and between E. Clemens Horst Company, and/or H. N. Ord, and/or George E. Miller, hereinafter called "the said assured", and The

Hartford Accident and Indemnity Company of Hartford, Connecticut, hereinafter called "said Indemnity Company", witnesseth:

Whereas, on the 27th day of July, 1925, the said Indemnity Company did execute and deliver to the said assured that certain Employers' Liability Policy No. CE-10789, wherein said Indemnity Company did indemnify the said assured against loss by reason of the liability imposed by law upon the said assured for damages on account of bodily injuries, including death, at any time resulting therefrom, whether instantaneous or not, suffered or alleged to have been suffered as the result of an accident occurring while said policy was in force, by any employee or employees of the said assured, while at or about the work of the assured, as described in said policy, all of which more fully appears from said policy above described, reference to which is hereby made the same as though said policy was incorporated in all its terms in this memorandum of Agreement; and

Whereas, on or about the 30th day of October, 1925, E. Clemens Horst Company, one of the above named assured, was served with verified copies of complaints and summons in the action instituted in the Circuit Court of the State of Oregon for the County of Multnomah, entitled *Margaret E. Rogan v. E. Clemens Horst Company, a corporation,* registry number L-4417, and in the action instituted

in the same court by W. P. Rogan against E. Clemens Horst Company, registry number L-4416, in which said actions the said Margaret E. Rogan sought to recover from the said E. Clemens Horst Company, one of the said assured, the sum of $20,700.00, and the said W. P. Rogan sought to recover from the said E. Clemens Horst Company the sum of $8,150.00, on account of personal injuries alleged in said respective complaints to have been incurred through the negligence and carelessness of the said E. Clemens Horst Company, one of the said assured, on the 29th day of August, 1925, while said Rogans were being conveyed by the said E. Clemens Horst Company from the railroad station at Salem, Oregon, on the Pacific Highway to the hop ranch of said E. Clemens Horst Company near Independence, Oregon; and

Whereas, a dispute has arisen between the said assured and the said Indemnity Company as to the alleged liability of the said Indemnity Company under its policy to indemnify the said assured against loss by reason of the said accidents above described, the said assured contending that the claims of the said Rogans, based on said alleged accident, come within the purview of said employers' liability policy above described, and the said Indemnity Company denying liability thereunder; and

Whereas, it is the desire of all of the parties

hereto that said actions instituted by the said Rogans should be settled without further litigation;

Now, therefore, it has been agreed, and it is hereby understood and stipulated that the said E. Clemens Horst Company, one of the said assured, may settle and adjust with the said Rogans, through their respective attorneys, Messrs. John F. Logan and Stephen W. Matthieu, the claims of the said Rogans, for the sum of Four Thousand Dollars ($4,000.00) in cash, said sum to include all doctors', hospital, and nurse bills and medical expenses incurred by either of said Rogans on account of the accident hereinabove described; it being distinctly understood and agreed that none of the parties hereto, by entering into this agreement, or by doing any of the things stipulated to be done under the terms hereof, including said settlement, shall be in any way prejudiced in event suit or action be instituted and prosecuted by the said assured, or any thereof, to recover under the employers' liability policy above described, or in any negotiations hereinafter had for the purpose of adjusting any of the claims of the respective parties in said policy prescribed, the said Indemnity Company hereby waiving its right to claim a breach of Condition "C" of the general conditions and warranties of said employers' liability policy aforesaid, which provide that the said assured shall not voluntarily assume any liability, nor incur any expenses other than for such immediate surgical re-

lief as is imperative at the time of an accident, nor settle any claim except at the assured's own cost, and Condition "N" of said general conditions and warranties of said employers' liability policy aforesaid, which provides that no agreement, condition or warranty of said policy shall be waived or changed, except by endorsement attached thereto, signed by an executive officer of the company or the superintendent of its liability department, nor shall notice to, nor knowledge possessed by any agent or any other person be held to effect a waiver or change in any part of said policy, unless endorsed thereon and signed as in said policy provided; it being further distinctly understood and agreed that none of the acts of any of the parties in entering into this agreement, or in performing thereunder, shall be construed as a waiver of any right he or it may have with reference to any rights under said employers' liability policy aforesaid, and these articles of agreement, or any act done or performed by any party hereto, or by any person under the terms hereof, shall not be available to the other as evidence for or against such party, in the event that litigation ensues for the purpose of settling or adjusting the dispute which has occasioned the execution and delivery of this memorandum.

In witness whereof, the parties hereto have exe-

cuted this instrument the day and date herein first above written.

E. Clemens Horst Company,
a corporation,
By E. C. Horst,
(Seal) President.

H. N. Ord,
By E. C. Horst.

George E. Miller,
By E. C. Horst.

The Hartford Accident and Indemnity Company,
By Daniel McPeak,
(Seal) Resident Secretary.

And afterwards, to-wit, on Monday, the 21st day of February, 1927, the same being the 95th judicial day of the regular November term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon

E. Clemens Horst Company, a corporation
Plaintiff
vs.
The Hartford Accident and Indemnity Company, a corporation
Defendant

No. L-9929

February 21, 1927.

This cause was heard by the Court upon the de-

murrer to the complaint herein, and was argued by Mr. Albert B. Ridgway, of counsel for plaintiff, and Mr. John S. Coke, of counsel for defendant. Upon consideration whereof

It is ordered that the said demurrer be and the same is hereby sustained.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

Portland, Oregon, Feby. 24, 1927.

R. S. BEAN, District Judge (oral):

This is an action on an Employers' Liability Contract by the terms of which the defendant agreed to indemnify the plaintiff against all liability imposed by law upon it for all bodily injury suffered as a result of an accident by any of its employes while in or about the work of hop picking including all work of operation incident or pertinent thereto or connected therewith. The plaintiff was at the time the owner of a hop yard at Eola, Polk County. In accordance with its usual custom on the approach of the harvest season of 1925, it caused to be procured and distributed a circular asking for two thousand hop pickers to commence

work on the first of September. In this circular it was stated that its office would be in the City of Portland at a certain place where its representative could be found, and that it would transport those whom they hired as hop pickers from Salem to their hop yard free of charge provided they arrived there at any time between the 29th and the 31st of August.

On the 5th of August, in pursuance of this arrangement, the plaintiff entered into a contract through its Portland agent with W. P. Rogan and wife, by the terms of which they were to pick hops for the plaintiff commencing September first at the plaintiff's hop yard, for a certain rate per pound, and the plaintiff agreed to transport them from Salem to the hop yard free. In pursuance of this arrangement the Rogans went from Portland to Salem on August 29th, and while being transported in one of plaintiff's trucks from Salem to the hop yard they were injured. They brought an action against the plaintiff to recover damages on account of the injury, and this action was settled and compromised with the consent of the Insurance Company, they stipulating, however, that such consent would not operate as a waiver of any defense it might have under its liability contract.

Now counsel have argued in briefs and in oral arguments with consumate ability the interesting question as to whether the Rogans were employes of the plaintiff at the time of their injury. But in

my judgment that question is not material to the present controversy. The rights of the parties to this litigation must be determined by the terms of the liability contract. By that contract the defendant agreed to indemnify the plaintiff against liability for an accidental injury suffered by its employes while at or about the work of hop picking, or work or operation incident or appurtenant thereto or connected therewith. At the time the Rogans were injured they were not at work hop picking or in any work incident to or connected therewith; they had not yet reached the hop yard and their work was not to begin until the first day of September, two days after they were injured. While by the contract of employment of August 5th it was agreed that the plaintiff should transport the Rogans from Salem to the hop yard free, their work of hop picking was not to commence until September 1st, and *the liability of the Insurance Company did not attach until that time.*

Therefore the demurrer will be sustained.

And afterwards, to-wit, the 26th day of March, 1927, there was duly filed in said court and cause a motion for a re-hearing, in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

MOTION FOR RE-HEARING

Comes now the plaintiff, and based on the points raised in the attached memorandum moves this Honorable Court for a re-hearing on the demurrer filed by the defendant against the complaint of plaintiff, and for an opportunity to present either a written memorandum of an argument and the authorities in support of plaintiff's contention, or an oral argument.

RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 26th day of March, 1927.

JOHN S. COKE,
Of Attorneys for Defendant.

Attached and made a part of said motion there was duly filed in said court and cause a memorandum in words and figures as follows, to-wit:

MEMORANDUM

Demurrer Sustained

Briefly stated, the court has held that the Insurance Company is not liable to the Horst Company for money paid in settlement of the Rogans' claims for injuries sustained through the negligence of the Horst Company, for the following reasons:

The indemnity policy of the Hartford Company merely protected the Horst Company against liability for accidental injury suffered by its employees while at or about the work of hop picking, or work or operations incident or appurtenant thereto or connected therewith;

But the Rogans at the time of their injuries, August 29th, were not at work hop picking, or in any work incident to or connected therewith, in that at the time of the accident the Rogans were being conveyed by the Horst Company from Salem to the Eola Ranch, where two days later they were to begin picking hops.

Court Ignores Endorsement

We cannot but believe that the court, in reaching the above conclusion, is completely ignoring a vital and far-reaching "rider" or "endorsement" attached to the policy, and was only considering that provision in Warranty Four of the policy which

described one of the types of work covered by the policy as "hop picking".

Endorsement Enlarges Warranty 4

The endorsement referred to, and set forth on page 4 of Exhibit "A" attached to plaintiff's complaint (also plaintiff's answering brief, page 2) as far as same is pertinent, provides:

> "In consideration of the premium at which this policy is written, it is hereby understood and agreed that it is the *intent of this policy to cover all the operations of the assured in Oregon, whether or not such operations are declared under Warranty* 4."

Effect of Endorsement

With this endorsement in mind, the liability clause of the policy necessarily provides that the Insurance Company agreed to indemnify the Horst Company

> "Against loss by reason of the liability imposed by law upon the assured for damages on account of bodily injuries . . . suffered . . . as the result of an accident occurring while this policy is in force by any employee or employees of the assured while at or about the work of the assured *in all operations of the assured in Oregon, whether or not such operatiosn are declared under Warranty* 4, which, for the purpose of this insurance, shall include all operations necessary, incident, or appurtenant thereto, or connected therewith, whether such operations are conducted at the work place defined and described in the warranties,

or elsewhere, in connection with or in relation to such work place."

The words underscored have been taken by us from the endorsement quoted above, and interpolated in the indemnity clause.

Conceding, therefore, for the purposes of this argument that the Rogans were employees on August 29th, and that their injuries were suffered as the result of an accident occurring while in or about an operation of the Horst Company in Oregon, the fact that they were not actually engaged in the picking of hops becomes immaterial. Their status as employees, and the accident arising out of and in the course of an operation of the Horst Company in Oregon, brings their cases squarely within the liability clause of the policy, read in the light of the above endorsement.

Whole Policy Should Be Considered

We concede, as said by the Court, that the rights of the parties to this litigation must be determined by the terms of the liability contract.

We most earnestly submit, however, that all the important terms of the policy should be considered.

Briefly stated, Plaintiff's Contention in order that the Court may appreciate the relation of this particular endorsement to the theory on which plaintiff's action is based, our contention is this:

1. The Hartford Company agreed to indemnify the Horst Company against all liability imposed upon it by law for all bodily injuries suffered as a

result of an accident by an employee while in or about any operation of the Horst Company in Oregon, and not merely when their employees were picking hops.

2. The Rogans were employees of the Horst Company, and the day on which they suffered injuries through the negligence of the Horst Company they were engaged in an operation then being carried on by the Horst Company in Oregon, to-wit, transporting its employees from Salem to the Eola Ranch to harvest its hops, pursuant to a contract entered into with its employees.

We have already presented our argument on the second contention.

That we may have an opportunity to present an argument and the law on the first contention this motion for a re-hearing is

Respectfully submitted,

RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.

And afterwards, to-wit on Monday, the 4th day of April, 1927, the same being the 25th judicial day of the regular March term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon

E. Clemens Horst Company, a corporation
Plaintiff
vs.
The Hartford Accident and Indemnity Company, a corporation
Defendant
No. L-9929

April 4, 1927.

This cause was submitted to the court on a petition for re-hearing, upon consideration whereof

It is ordered that said petition be and the same is hereby allowed.

And afterwards, to-wit on Monday, the 16th day of May, 1927, the same being the 60th judicial day of the regular March term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

In the District Court of the United States for the District of Oregon

E. Clemens Horst Company, a corporation
Plaintiff
vs.
The Hartford Accident and Indemnity Company, a corporation
Defendant
No. L-9929

May 16, 1927.

This cause was submitted to the Court upon

briefs on demurrer to the complaint herein, plaintiff appearing by Mr. Albert B. Ridgway, of counsel, and defendant by Mr. John S. Coke, of counsel. Upon consideration whereof

It is ordered that said demurrer be and the same is hereby sustained.

And afterwards, to-wit on the 16th day of May, 1927, the following memorandum of opinion was rendered by the Honorable Robert S. Bean, United States District Judge for the District of Oregon:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

DEMURRER TO COMPLAINT

Portland, Oregon, May 16, 1927.

Memorandum by Bean, District Judge:

This is an action on an employers' liability contract. In the first clause thereof, the defendant agrees to indemnify the plaintiff against loss by reason of liability imposed by law on it for damages on account of bodily injuries suffered as a result of an accident, occurring while the policy is in force, to an employe of the plaintiff while at or about the work of the assured described in War-

ranty IV, and which shall include all operations necessary, incident or appurtenant thereto or connected therewith. Warranty IV describes the various works covered by the policy as hop picking, carpentry, grading land, drying and evaporating vegetables, and office employes. By an endorsement attached to and made a part of the policy, it is stated that it is the intention of the policy to cover all operations of the assured in Oregon, whether or not such operations are described under Warranty IV, the additional premium, if any, to be adjusted at the end of the policy year.

By the policy, therefore, as actually issued, delivered and accepted, the defendant agreed to indemnify the plaintiff against loss by reason of liability imposed by law upon the assured for "damages . . . suffered . . . as a result of an accident occurring while the policy is in force, by an employe or employes of the assured while at or about the work of the assured" in all its operations in Oregon, whether described in Warranty IV or not.

The defendant is, or was at the time of the issuance of the policy, the owner of a hop yard at Eola in Polk County. In accordance with its usual custom, on the approach of the harvest season of 1925, it caused to be prepared and distributed a circular asking for two thousand hop pickers to commence work on the first of September. In this circular it stated that its office would be in Portland at a certain place, where its representative could be

found, and that it would transport those who were to pick hops from Salem to the hop yard free of charges provided they arrived there at any time between the 29th and 31st of August. On the 5th of August, in pursuance of this arrangement, the plaintiff entered into a contract through its Portland agent with W. P. Rogan and wife, by which they were to pick hops for the plaintiff commencing September 1st, at plaintiff's hop yard, at a certain rate per pound, and plaintiff agreed to transport them from Salem to the hop yard free. In pursuance of this arrangement the Rogans went from Portland to Salem on the 29th of August, and while being transported in one of plaintiff's trucks from Salem to the hop yard were injured.

They thereafter brought an action against the plaintiff to recover damages on account of the injury, and this action was settled and compromised with the consent of the Insurance Company, but without any waiver by it of any defense it might have under its liability contract.

A demurrer to the complaint was heretofore sustained on the ground that by the contract the defendant agreed to indemnify the plaintiff against liability for injury suffered by the Rogans while in or about the work of hop picking, and since they were not so at work at the time of their injury, there could be no recovery. A rehearing was allowed, and it is now claimed that the court did not give sufficient importance to the endorsement on

the policy intending to make it cover all the operations of the plaintiff in Oregon, and it is argued that the transportation of the prospective hop pickers to the yard was one of the operations of the plaintiff and therefore covered by the policy.

Conceding for present purposes such to be the interpretation of the contract, and that the defendant agreed thereby to indemnify the plaintiff against liability for damages on account of an injury to an employe engaged at or about the work of transporting prospective hop pickers to the yard, it does not follow that it is liable in the instant case. At the time of their injury the Rogans were not employed or at work in such transportation. They had been engaged to pick hops and their work was not to commence for two days after the time of their injury. By the contract the defendant agreed to indemnify the plaintiff from liability imposed by law on account of injury to employes "while at or about the work of the assured".

To entitle the plaintiff to recover therefore, it is essential that it appear (1) that the injured party was, at the time of his injury, an employe of the plaintiff, and (2) that the injury was the result of an accident while such party was "at or about the work of the plaintiff".

The Rogans were not at or about the work of the plaintiff at the time of their injury. It is true that they were being transported by the plaintiff to the place where they were to work, but they were

not to begin work until two days after their injury. At the time of their injury, they were not working for the plaintiff in any capacity, therefore it cannot, in my judgment, be said that their injury occurred while they were at or about the work of the plaintiff as provided in the policy.

Demurrer is therefore sustained.

And afterwards, to-wit, on Thursday, the 26th day of May, 1927, the same being the 68th judicial day of the regular March term of said court; present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

May 26, 1927.

Now, at this day, on motion of Mr. Albert B. Ridgway, of counsel for plaintiff, it is ordered that plaintiff be and is hereby allowed an extension of time within which to file its amended complaint herein, to and including Monday, the 6th day of June, 1927.

And afterward, to-wit on the 2nd day of June, 1927, there was duly filed in said court and cause an amended complaint in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

AMENDED COMPLAINT

No. L-9929

Comes now E. Clemens Horst Company, leave of Court having first been had and obtained, and files this its amended complaint, and for cause of action against the above named defendant The Hartford Accident and Indemnity Company, complains and alleges:

I.

That at all of the dates and times in this amended complaint mentioned plaintiff E. Clemens Horst Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, with its principal office and place of business at 235 Pine Street in the City of San Francisco, State of California, and was and is a citizen of the State of

New Jersey, resident and domiciled at the San Francisco address hereinabove given, and at all of the dates and times in this complaint mentioned plaintiff was and now is duly licensed to follow and conduct its business in the State of Oregon.

II.

That at all of the dates and times in this amended complaint mentioned defendant The Hartford Accident and Indemnity Company of Hartford, Connecticut, was and now is a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, with its principal office and place of business in the City of Hartford, Connecticut, and was and is a citizen of the State of Connecticut, resident and domiciled in the said City of Hartford, and at all of the dates and times in this amended complaint mentioned defendant was and now is duly licensed to follow and conduct its business in the State of Oregon.

III.

That during the calendar year 1925, and for some years theretofore, plaintiff was and has been and now is engaged in the business of growing, harvesting, warehousing, buying, selling, and generally dealing in hops, and in connection with and as a part of the said business of plaintiff, operated during the 1925 calendar year large hop yards in the "Eola" district of Marion County, Oregon, the yards of plaintiff aforesaid being located in said

Marion County, Oregon, about seven miles in a southwesterly direction from the City of Salem, Oregon, and in the course of and as a part of the business of plaintiff, the employment by plaintiff of large numbers of persons is annually required for the planting and cultivation of its hop crops aforesaid, and more particularly for the harvesting thereof.

IV.

That on to-wit the 5th day of August, 1925, and for the purpose of assisting plaintiff in the harvesting of its hop crops upon the yards of plaintiff in the Eola District aforesaid, plaintiff employed W. P. Rogan and wife Margaret E. Rogan in the capacity of hop pickers, and as a part of the said contract of employment of said Rogans and of its Oregon operations and business, plaintiff agreed with said Rogans to transport them from the railroad station at Salem, Oregon, to the Eola District ranches and hop yards of plaintiff aforesaid.

V.

That for the considerations therein stated, and on to-wit the 27th day of July, 1925, plaintiff and defendant entered into a certain Employer's Liability Contract and Policy of Insurance, bearing defendant's policy number CE-10789, a copy of which policy and contract of insurance so by plaintiff and defendant entered into, together with all endorsements then or thereafter made upon said contract and policy of insurance is hereto attached, marked

Exhibit "A", and by reference thereto made a part hereof, and which contract of indemnity and policy of liability insurance at all times thereafter remained and was and now is in full force and effect and uncancelled and unrevoked; and that plaintiff has duly performed all of the conditions of said contract and policy of liability insurance upon its part to be performed.

VI.

That thereafter, and on to-wit the 29th day of August, 1925, the said W. P. Rogan and the said Margaret E. Rogan, pursuant to their contract of employment with plaintiff theretofore made and entered into as aforesaid, came from the City of Portland, Oregon, to the Railway Station at Salem, Oregon, for the purpose of the transportation by plaintiff of said Rogans to plaintiff's hop yards aforesaid, and said Rogans were thereupon met by agents of plaintiff at the Southern Pacific Railroad Station at Salem, Oregon, and in pursuance of the terms of their said contract of employment with plaintiff, and during the term of the employment of said Rogans by plaintiff, and in the course and as a part of the Oregon business and operations of plaintiff, were by plaintiff and its said agents directed to and did board and go upon a motor truck by plaintiff owned and/or operated for the purpose of transportation of said Rogans and their baggage and effects from the railroad

station at Salem aforesaid to the said hop yards of plaintiff.

VII.

That said motor truck was a gas-propelled vehicle, equipped with driver's seat in front, and rear flat platform or deck extending from the driver's seat a distance of approximately ten feet to a point beyond the rear wheels of said vehicle, said rear deck and platform being seven or eight feet in width, without railing or seats for passengers, it being the type of conveyance usually by plaintiff used in the transportation of hop pickers from nearby railway points to its hop yards and ranches aforesaid.

VIII.

That some fifteen persons additional to and other than said Rogans likewise at said time and place boarded the truck of plaintiff for the purposes aforesaid, with a considerable number of trunks and amount of hand baggage; and that during the term of the employment by plaintiff of said Rogans, and while said Rogans were by plaintiff employed, and in the course of the operations in Oregon of plaintiff, and of the transportation by plaintiff of said Rogans from the City of Salem aforesaid to one of the hop yards of plaintiff in said Eola District, and at a point approximately six miles southwesterly from said City of Salem, the agent and employee of plaintiff driving and in charge of plaintiff's said truck and conveyance,

executed a sharp turn of said conveyance while driving at high speed, thereby throwing each of the said Rogans from said motor truck and conveyance of plaintiff, and from a trunk of said Rogans placed upon said truck, and upon which they were then sitting, a distance of approximately five feet to the ground, the said trunk of said Rogans thereupon being likewise thrown from said truck and upon the said Rogans.

IX.

That by reason of the said Rogans being thrown from the truck and conveyance of plaintiff at the time and under the circumstances hereinabove set forth, the said Margaret E. Rogan was bruised and painfully injured, and suffered an intra capsular fracture of her left hip, causing a shortening of her left leg, and further suffered a compound longitudinal fracture of her right leg above the ankle, and the said W. P. Rogan was bruised and painfully injured, suffering a dislocation of his left shoulder joint, and a fracture of his left arm between the elbow and shoulder.

X.

That plaintiff believes and therefore avers that the injuries to its said employees W. P. Rogan and Margaret E. Rogan occurred through the negligence and carelessness of plaintiff's agents and employees in failing to provide the said Rogans with a vehicle equipped with fixed and stationary seats, and rails or sides or other means of the said Rogans holding to and remaining upon said truck

while in motion, and by reason of plaintiff's said employee and driver sharply and abruptly turning said vehicle, without notice or warning to the said Rogans and other persons riding thereon, and while going at a high rate of speed, and that by reason of the facts aforesaid there was imposed upon plaintiff herein by the laws of the State of Oregon a liability for the injuries so by said Rogans sustained, in the minimum amount of $4,000.00, and by said Rogans claimed to be in the amount of $25,850.00.

XI.

That thereafter, and on to-wit the 31st day of August, 1925, plaintiff gave to defendant herein immediate written notice of the occurrence of said accidents to said Rogans, with all particulars to plaintiff available, and sufficient to identify plaintiff as the assured, and from time to time thereafter has provided defendant with all other particulars and information concerning said accident and coming to plaintiff's knowledge or information, and has at all times aided to the extent of plaintiff's ability in the securing of information and evidence desired by defendant and its agents and attorneys concerning the accident aforesaid.

XII.

That thereafter, and on to-wit the 27th day of October, 1925, the said Margaret E. Rogan instituted in the Circuit Court of the State of Oregon for Multnomah County by complaint by her filed,

an action therein entitled Margaret E. Rogan, plaintiff, v. E. Clemens Horst Company, a corporation, defendant, and numbered L-4417, for the purpose of securing judgment against plaintiff herein for the sum of $20,700.00, by said Margaret E. Rogan claimed from plaintiff by reason of injuries by her sustained in the course and as the result of the accident hereinabove stated, copy of which complaint in which Circuit Court action is hereto attached and marked Exhibit "B", and by reference thereto made a part hereof.

XIII.

That thereafter, and on to-wit the 27th day of October, 1925, the said W. P. Rogan instituted in the Circuit Court of the State of Oregon for Multnomah County, by complaint by him filed, an action therein entitled W. P. Rogan, plaintiff, v. E. Clemens Horst Company, a corporation, defendant, and numbered L-4416, for the purpose of securing judgment against plaintiff herein for the sum of $5,150.00, by said W. P. Rogan claimed from plaintiff by reason of injuries by him sustained in the course and as the result of the accident hereinabove stated, copy of which complaint in which Circuit Court action is hereto attached and marked Exhibit "C", and by reference thereto made a part hereof.

XIV.

That thereafter, and on to-wit the 30th day of October, 1925, summons issued in the Circuit Court actions hereinabove mentioned, together with cop-

ies of complaint therein filed, were served upon plaintiff herein; whereupon plaintiff immediately forwarded to defendant herein the said summons and copies of complaints so served upon plaintiff, and demanded of defendant herein the defense by defendant on behalf of plaintiff of said Circuit Court actions so by said Rogans instituted, in conformity with the provisions of the said contract and policy of liability insurance aforesaid, but that defendant herein at all times has and now does disavow any liability under the contract and policy of insurance aforesaid to indemnify plaintiff herein against loss to plaintiff by reason of the liability of plaintiff to said Rogans imposed by law for damages by said Rogans sustained on account of bodily injuries by them suffered in the accident aforesaid, despite the fact that neither of said Rogans comes within any of the exclusions of liability in paragraphs 1-a, 1-b, 1-c, 1-d, and 1-e of the policy of insurance aforesaid, or other exclusions therein provided whatsoever.

XV.

That thereafter, and on to-wit the 30th day of November, 1925, and after negotiations between counsel for the parties hereto and counsel for said Rogans, extending over a period of several weeks, plaintiff herein settled its said and any and all liability of plaintiff and/or plaintiff's employees (including H. M. Ord and George E. Miller), to said Rogans or either thereof, by the payment by plain-

tiff to said Rogans of the cash sum and amount of $4,000.00, of which payment and settlement defendant was then notified, and at all times thereafter advised; it having been theretofore and then being agreed between plaintiff and defendant (but without admission by defendant of liability upon its said policy and contract of insurance) that in the interests of all parties concerned the said settlement with said Rogans ought to and should be made; and in order to make possible the said settlement by plaintiff herein without waiver of or prejudice to any rights of plaintiff under said contract of insurance, defendant, by its writing of said date (November 30, 1925) and by its secretary and executive officer duly signed and to plaintiff delivered, expressly waived those provisions of said contract of insurance precluding said or any settlement by plaintiff with said Rogans, and particularly waived the requirements by "Condition C" and "Condition N" of said insurance policy and contract upon plaintiff imposed; defendant by its said writing agreeing that the said settlement by plaintiff made with said Rogans might and should be made without prejudice to plaintiff's right to indemnity under the contract of insurance aforesaid.

XVI.

That heretofore and on to-wit the 30th day of November, 1925, plaintiff advised defendant of plaintiff's loss of said sum of $4,000.00, so by plaintiff paid to said Rogans as aforesaid, and made

demand upon defendant for the payment by defendant to plaintiff of said sum as in said contract and policy of insurance provided for, but that defendant refused and at all times since and now refuses to pay to plaintiff said or any sum, or to in any manner indemnify or protect plaintiff in its said loss so by plaintiff sustained as herein set forth.

XVII.

That by reason of defendant's repudiation of its obligations to plaintiff under said insurance contract, and of defendant's denial of liability thereunder, plaintiff was required to and did retain attorneys and counsel to investigate said accident and injury to said Rogans, to defend the suits so by said Rogans brought against plaintiff, and on behalf of plaintiff to negotiate settlement of and to settle said claims, which services were by plaintiff's said attorneys to plaintiff rendered, and were and are of the reasonable and agreed value of $500.00, for the payment of which plaintiff herein has become and is legally liable.

XVIII.

That for the bringing and prosecution by plaintiff of this action upon defendant's said contract and policy of insurance (more than eight months having elapsed since notice to defendant of plaintiff's claims and loss thereunder), the sum of $500.00 is a reasonable sum to be by the court above entitled adjudged and allowed to plaintiff as attorneys' fees.

XIX.

That there is involved in this action a sum and amount in excess of $3000.00, exclusive of interest and costs.

Wherefore, plaintiff prays judgment against defendant in the sum of $4,000.00 with interest thereon at 6 per cent per anuum from November 30, 1925, until paid, and for the further sum of $500.00, and for the further sum of $500.00 as attorneys' fees for the institution and prosecution of this action, and for plaintiff's costs and disbursements herein.

BROBECK, PHLEGER & HARRISON,
RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.

State of Oregon, County of Multnomah, ss.

I, Albert B. Ridgway, being first duly sworn, depose and say that I am one of the attorneys for plaintiff in the above entitled action; and that the foregoing amended complaint is true as I verily believe; and that I make this affidavit for the reason that plaintiff is a non-resident of the State of Oregon and none of its officers are at present within said State. That I am acquainted with the facts alleged in said amended complaint.

ALBERT B. RIDGWAY.

Subscribed and sworn to before me this 2nd day of June, 1927.

M. J. LAIDLAW,
Notary Public for the State of Oregon.

My commission expires Feb. 28, 1928.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 2nd day of June, 1927.

GRIFFITH, PECK & COKE,
Attorneys for Defendant.

(Exhibits A, B, and C attached to the amended complaint are the same exhibits as were attached to the original complaint filed in said cause.)

And afterward, to-wit on the 6th day of June, 1927, there was duly filed in said court and cause a demurrer to the amended complaint in words and figures as follows, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

DEMURRER TO AMENDED COMPLAINT

Comes now the defendant above named and demurs to the plaintiff's amended complaint herein, for the reason that said amended complaint does not state facts sufficient to constitute a cause of action.

GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant.

In support of the foregoing demurrer defendant will rely on the proposition that it appears upon the face of plaintiff's amended complaint, together with the stipulated facts entered into between the parties hereto and filed herein, that W. P. Rogan and/or Margaret Rogan, at the time of the accident described in the amended complaint, were not employees of and were not in the employ of the plaintiff within the terms of the policy of insurance attached to said complaint as an exhibit; that said accident and injury to said Rogans were not covered or intended to be covered by the said policy;

That the amended complaint is identical in terms with the original complaint filed herein, except that there has been added:

(1) In line 30 of page 2 the words, "and of its Oregon operations and business";

(2) In line 28 of page 3 the words, "and in the course and as a part of the Oregon business and operations of plaintiff";

(3) In line 19 of page 4 the words, "of the operations in Oregon of plaintiff and";

That the above quoted matters do not overcome the effect of the demurrer filed to the original complaint, or the ruling or decision of this court rendered thereunder; that said matters, while not inserted in the original complaint, were, nevertheless, presented to and considered by the court under the demurrer to the original complaint, and defendant

will rely upon Section 68 Oregon Laws and annotations thereunder.

JOHN S. COKE,
Of Attorneys for Defendant.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 6th day of June, 1927.

RIDGWAY, JOHNSON & MONTGOMERY,
Attorneys for Plaintiff.

And afterwards, to-wit, on Monday, the 18th day of July, 1927, the same being the 13th judicial day of the regular July term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

July 18, 1927.

Now at this day come the plaintiff by Mr. Albert B. Ridgway, of counsel, and defendant by Mr. John S. Coke, of counsel, whereupon this cause comes on to be heard by the court upon the demurrer to the amended complaint herein, and the court

having heard the arguments of counsel will advise thereof.

And afterwards, to-wit on Monday, the 25th day of July, 1927, the same being the 19th judicial day of the regular July term of said court, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in this cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff
vs.
THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

July 25, 1927.

This cause was heard by the court upon the demurrer to the amended complaint herein, and was argued by Mr. Albert B. Ridgway, of counsel for plaintiff, and Mr. John S. Coke, of counsel for defendant. Upon consideration whereof

It is ordered that said demurrer be and the same is hereby sustained.

And afterwards, to-wit, on the 28th day of December, 1927, there was duly filed in said court and cause a motion in words and figures as follows, to-wit:

In the District Court of the United States for the District of Oregon

E. Clemens Horst Company, a corporation
Plaintiff
vs.
The Hartford Accident and Indemnity Company, a corporation
Defendant

No. L-9929

MOTION

Comes now the defendant in the cause above entitled, and moves the court for a judgment on the pleadings and for costs in favor of defendant, on the ground that on July 25, 1927, the court sustained defendant's demurrer to the amended complaint herein, and by its order allowed plaintiff ten days from said date within which to further plead, and plaintiff has failed and refused to further plead or appear herein since date of said order.

Griffith, Peck & Coke,
By Clarence D. Phillips,
Attorneys for Defendant.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy accepted this 28th day of December, 1927.

Ridgway, Johnson & Kendall,
Of Attorneys for Plaintiff.

And afterwards, to-wit, on Wednesday, the 28th day of December, 1927, the same being the 38th ju-

dicial day of the regular November term of said court, present the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in this cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

ORDER

The motion of the defendant in the above entitled cause for a judgment against plaintiff on the pleadings, and for its costs and disbursements incurred herein, coming on for hearing, plaintiff being represented by Albert B. Ridgway of Ridgway, Johnson & Kendall, and defendant being represented by John S. Coke of Griffith, Peck & Coke, and it appearing to the Court that on July 25, 1927, the court sustained defendant's demurrer to the amended complaint of plaintiff, and by its order allowed plaintiff ten days from said date within which to further plead, and the plaintiff in open court by its counsel refusing to further plead, and electing to stand on its said amended complaint,

Now, therefore, it is hereby ordered and adjudged that defendant have judgment against

plaintiff on the pleadings, and further that defendant have and recover from plaintiff its costs and disbursements incurred in this action.

Dated this 28th day of December, 1927.

R. S. Bean, Judge.

And afterwards, to-wit, the 31st day of December, 1927, there was duly filed in said court and cause a petition for a writ of error and assignment of errors in words and figures as follows, to-wit:

In the District Court of the United States for the District of Oregon

E. Clemens Horst Company, a corporation
Plaintiff

vs.

The Hartford Accident and Indemnity Company, a corporation
Defendant

No. L-9929

PETITION FOR WRIT OF ERROR

Comes now E. Clemens Horst Company, a corporation, plaintiff herein, and says that on or about the 28th day of December, 1927, this court entered judgment herein in favor of the defendant above named, and against the above named plaintiff, in which judgment and the proceedings had prior thereto in this case certain errors were committed, to the prejudice of the plaintiff, all of which will more in detail appear in the Assignment of Errors which is filed with this petition.

Wherefore, this plaintiff prays that a Writ of Error may issue in its behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the records, proceedings and papers in this case, duly authenticated, may be sent to the Circuit Court of Appeals for the Ninth Circuit.

BROBECK, PHLEGER & HARRISON,
RIDGWAY, JOHNSON & KENDALL,
Attorneys for Plaintiff E. Clemens Horst Company, a corporation.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service by copy admitted at Portland, Oregon, this 31st day of December, 1927.

GRIFFITH, PECK & COKE,
JOHN S. COKE,
Attorneys for Defendant.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff
vs.
THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

ASSIGNMENT OF ERRORS

Now comes the plaintiff above named, and files

the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above entitled cause from the judgment entered in the above entitled court on the 28th day of December, 1927.

I.

That the United States District Court for the District of Oregon erred in sustaining the demurrer of the defendant to the amended complaint of plaintiff.

II.

That the United States District Court for the District of Oregon erred in not overruling the demurrer of the defendant to the amended complaint of plaintiff.

III.

That the United States District Court erred in holding that plaintiff's amended complaint does not state facts sufficient to constitute a cause of action.

IV.

That the United States District Court for the District of Oregon erred in entering judgment in favor of the defendant above named and against the plaintiff above named.

V.

That the United States District Court for the District of Oregon erred in holding that the liability of the defendant Insurance Company under the terms of its indemnity policy did not protect the Rogans until September 1, 1925.

VI.

That the United States District Court for the District of Oregon erred in holding that at the time of the injuries to the Rogans, the Rogans were not "at or about the work of plaintiff".

VII.

That the United States District Court for the District of Oregon erred in holding that before plaintiff could recover on the indemnity policy in the instant case, it must allege and prove that the injuries occurred to the Rogans after they had commenced their work of hop picking.

VIII.

That the United States District Court for the District of Oregon erred in holding that plaintiff could not recover for injuries to the Rogans because they were not employees of the plaintiff at the time the injuries were sustained, engaged "at or about the work of the plaintiff" within the purview of warranty four of the indemnity policy, as enlarged by the terms of that certain endorsement attached to said policy, declaring that it was the intent of said policy to cover all the operations of the assured in Oregon, whether or not such operations were declared under Warranty Four.

RIDGWAY, JOHNSON & KENDALL,
BROBECK, PHLEGER & HARRISON,
Attorneys for Plaintiff.

State of Oregon, County of Multnomah, ss.

Due, timely and legal service of assignment and

bond by copy admitted at Portland, Oregon, this 31st day of December, 1927.

JOHN S. COKE,
Of Attorneys for Defendant.

And afterwards, to-wit, on Tuesday, the 3rd day of January, 1928, the same being the 42nd judicial day of the regular November term of said ocurt, present the Honorable Robert S. Bean, United States District Judge, presiding, the following proceedings were had in this cause, to-wit:

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON

E. CLEMENS HORST COMPANY, a corporation
Plaintiff

vs.

THE HARTFORD ACCIDENT AND INDEMNITY COMPANY, a corporation
Defendant

No. L-9929

ORDER ALLOWING WRIT OF ERROR

On this 3rd day of January, 1928, came the plaintiff above named, appearing by its attorneys of record, and filing herein and presenting to the court its petition praying for a writ of error, and assignment of errors intended to be urged by it, and praying also that a transcript of the record of proceedings and papers upon which the judgment was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the

Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises;

Now, in consideration thereof, the court does hereby allow the Writ of Error, upon the plaintiff giving bond according to law in the sum of Five Hundred Dollars that it shall prosecute said writ of error to effect, and answer all costs if it fail to make said appeal good.

R. S. Bean, Judge.

And afterwards, to-wit, on the 3rd day of January, 1928, there was duly filed in said court and cause a bond on writ of error in words and figures as follows, to-wit:

In the District Court of the United States for the District of Oregon

E. Clemens Horst Company, a corporation
Plaintiff

vs.

The Hartford Accident and Indemnity Company, a corporation
Defendant

No. L-9929

BOND ON WRIT OF ERROR

Know all men by these presents, that we, E. Clemens Horst Company, a corporation, as principal, and Fidelity and Deposit Company of Maryland, a corporation, incorporated, organized and existing under and by virtue of the laws of the

State of Maryland, authorized to do business in the District of Oregon, are held and firmly bound unto the defendant above named in the full and just sum of Five Hundred Dollars ($500.00) to be paid to said defendant, its attorneys, successors or assigns; to which payment well and truly to be made we bind ourselves, our successors or assigns, severally by these presents.

Sealed with our seals and dated this 31st day of December, 1927.

Whereas, lately the District Court of the United States for the District of Oregon, in an action pending in said court between E. Clemens Horst Company, a corporation, plaintiff, and The Hartford Accident and Indemnity Company, a corporation, defendant, a judgment for costs was rendered against the said E. Clemens Horst Company, and the said E. Clemens Horst Company having obtained a writ of error and filed a copy thereof in said court to reverse the judgment in the aforesaid case, and a citation directed to said The Hartford Accident and Indemnity Company, a corporation, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be held in the City of San Francisco, California, on the ..... day of ....., 1928;

Now, the condition of the above obligation is such that if said E. Clemens Horst Company shall prosecute said writ of error to effect and answer

all costs if it fail to make the said plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

E. Clemens Horst Company,
By Maurice E. Harrison,
Secretary.

Fidelity and Deposit Company
of Maryland,
By Clarence D. Porter,
(Seal) Attorney in Fact.

Countersigned:
By Clarence D. Porter,
Resident Agent.

Approved:
R. S. Bean,
District Judge.

CLERK'S CERTIFICATE

United States of America, District of Oregon, ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing printed transcript of record on appeal in the case in which E. Clemens Horst Company, a corporation, is plaintiff in error, and The Hartford Accident and Indemnity Company, a corporation, is defendant in error, is a true and complete transcript of the record and proceedings had in said cause in said court, and

that I have compared the foregoing with the original record thereof.

In witness whereof, I have hereunto affixed my hand and the seal of said court at Portland, in said District, this .... day of January, 1928.

G. H. MARSH,
Clerk.

(Seal)